

**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP**

S/N 10/629,018

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant: | MORAD et al. | Examiner: | THUY TRAN LIEN |
| Serial No.: | 10/629,018 | Group Art Unit: | 1761 |
| Filed: | 07/29/2003 | Docket No.: | 2661.465US01 |
| Confirmation No.: | 7636 | | |
| Title: | MULTI-COMPONENT DOUGH | | |

RESPONSE UNDER 37 C.F.R. § 1.116

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This letter is in response to the Examiner's action dated November 27, 2007. Applicants previously filed an RCE in the above-captioned United States patent application. The RCE was filed in light of the Advisory Action dated 24 September 2007. Applicants assert that the enclosed Retty declaration establishes that the prior art does not disclose or teach the claimed thin crust layer. A puff pastry is not an unleavened thin crust. Applicants request an allowance of the claims as written.

In the Advisory Action the Examiner's primary argument is that there is no difference between a conventional puff pastry layer and an unleavened exterior pizza crust layer that is about 0.9 mm or less in thickness. The Examiner argues that the puff pastry layer of Van Der Graaf et al., U. S. Pat. No. 5,405,626, is identical to the thin 0.9 mm layer of the claims. This assertion is contrary to the knowledge of the skilled artisan.

The Examiner should find with this Response a Declaration of David C. Retty that provides factual evidence about the differences between the claimed 0.9 mm layer and the puff pastry layer of Van Der Graaf et al., U. S. Pat. No. 5,405,626.

The Examiner argues that the puff pastry layer of Van Der Graaf et al., U. S. Pat. No. 5,405,626, is identical to the thin 0.9 mm layer of the claims. This argument is incorrect and is not based on any evidence in the prior art (See Retty Dec. ¶ 2).

One of ordinary skill in the art knows that puff pastry is made by forming a large number of layers of fat and dough. Typical puff products are formed with about 99 layers of fat and 100 layers of dough. Such an uncooked layer has to have substantial thickness and is typically greater than 2 mm and often is as large as 4 mm (See Retty Dec. ¶ 3). This is the uncooked puff pastry layer disclosed in Van Der Graaf et al.

A thinner puff pastry layer is not practical since one of ordinary skill in the art could not obtain the numbers of layers of fat or dough required to obtain the flakey puff pastry's structure. Accordingly an uncooked puff pastry layer cannot be as thin as that claimed in the application.

Further, once cooked a puff pastry layer expands substantially as shown in the attachments to the previous response. In the previous response Applicants demonstrated that the cooked materials particularly on page 3 of the attachment shows cooked structures that do not correspond to the cooked structure as claimed. Clearly neither the uncooked puff pastry layer nor the cooked puff pastry layer of Van Der Graaf et al. can correspond to Applicants' claimed layer.

Upon baking a puff pastry expands by a factor of at least three times the original thickness and is often 5 to 20 mm in thickness after cooking (See Retty Dec. ¶ 4). Once cooked the puff pastry is typically flakey and is structurally fragile. Such a layer does not have the crispy character required for the exterior layer of pizza dough (See Retty Dec. ¶ 4). The structure of the puff pastry product in the prior art reference does not obtain the purpose of the invention since it is flakey and not structurally sound and is neither crispy or the appropriate thickness (See Retty Dec. ¶ 5).

The goal of the Van Der Graaf et al. reference is to obtain an expanded puff pastry layer. This is antithetical to Applicants' product. Applicants want to form a thin or smaller crispy structurally stable exterior layer on the bottom of the pizza crust. The Van Der Graaf et al. patent wants to obtain a thick 5 to 20 mm flakey puff pastry layer on the pizza product.

These end results are clearly different since Applicants' layer is a thin crispy layer while the Van Der Graaf et al. layer is a soft expanded flakey puff pastry layer that is different in virtually every aspect to the result desired by the inventors. One skilled in the art recognizes that

the uncooked puff pastry layer in Van Der Graaf et al. is not the same as the claimed 0.9 mm layer (See Retty Dec. ¶ 6). Since the uncooked puff pastry layer and its cooked results disclosed in the Van Der Graaf et al. reference are so different than the claimed structure, Van Der Graaf et al. in fact teaches away from the invention.

In summary, the Examiner's position that the puff pastry layer of Van Der Graaf is the same as the 0.9 mm layer as claimed is incorrect and the rejection should be withdrawn. Applicants request that the claims as filed be passed to issue.

The Examiner must take a declaration seriously and simply cannot disregard the assertions of the testimony in evidence. **M.P.E.P. § 716.01(c) (III)** states, in pertinent part:

In assessing the probative value of an expert opinion, the examiner must consider the nature of the matter sought to be established, the strength of any opposing evidence, the interest of the expert in the outcome of the case, and the presence or absence of factual support for the expert's opinion.

M.P.E.P. § 716.01(c) (III) also states, in pertinent part:

An affidavit of an applicant as to the advantages of his or her claimed invention, while less persuasive than that of a disinterested person, cannot be disregarded for this reason alone.

In *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985), the Federal Circuit found that, while the opinion testimony of a party having a direct interest in the pending litigation may be less persuasive than opinion testimony by a disinterested party, it cannot be disregarded for that reason alone and may be relied upon when sufficiently convincing. In *In re Sullivan*, 498 F.3d 1345, 1353 (Fed. Cir. 2007), the Federal Court found that the Board of Patent Appeals and Interferences must give declarations meaningful consideration before arriving at its conclusion. Unless the Examiner can find a factual flaw in the reasoning of the declaration, Applicants assert that claims are allowable.

The Examiner further admits, on page 2 of the action that a number of elements are missing from the art. These elements include moisture content of a layer, layer thickness, fat content, thickness ratios and other important elements. The Examiner argues that providing these elements is obvious but cites no authority. The Examiners analysis on pages 2-3 further asserts that the elements are obvious without any basis in the art. To achieve (e.g.) a structure, moisture content, or fat content the art must suggest such an element and provide a basis for its adaptation into the invention. Absent that the rejection must fail. The Examiner has provided no

reason why the art suggests these elements and does not base the analysis on any fact based analysis other than the Examiner's opinion.

The Examiner further rejects claims 47 and 49 over Van Der Graaf et al. with Bauman et al. U.S. Pat. No. 6,267,988. Applicants have demonstrated that the Van Der Graaf et al. reference does not teach the invention. Since the primary reference fails this rejection must fail. Bauman et al., however, fails to teach layers joined by an adhesive in a pizza or pizza like structure. Bauman et al. relates to a toaster pastry and seals only the periphery of adjacent layers to seal a filling inside the adjacent layers of the pastry. The utilization of pizza crust or pizza like crust for one of the layers in Bauman et al. does not expand the scope of Bauman et al. beyond a toaster pastry structure. The adhesive in Bauman et al. is utilized in a different technology area (toaster pastries) for a different purpose (to seal the periphery of adjacent layers to keep the filling inside the adjacent layers of the pastry) than the adhesive claimed in the application. Therefore, the technology, the purpose, and the use of the adhesive in Bauman et al. are not an obvious variant of the invention.

Applicants have demonstrated that neither reference teaches the invention.

23 Jan 2008
Date

Respectfully submitted,

Mark DiPietro

Mark DiPietro

Reg. No. 28,707

MERCHANT & GOULD P.C.

P.O. Box 2903

Minneapolis, MN 55402-0903

Telephone: (612) 371-5375

E-mail: mdipietro@merchant-gould.com

23552

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